

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PAMELA SUE GROVE,

Plaintiff-Appellant,

v

ROBERT CHARLES GROVE,

Defendant-Appellee.

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UNPUBLISHED

June 14, 2005

No. 253921

Charlevoix Circuit Court

LC No. 02-159519-DM

Before: Hoekstra, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's decision denying her permanent spousal support. We affirm.

**I. Facts and Procedural History**

The parties were married for twenty-three years before divorcing in 2003. They have three children all over the age of majority.<sup>1</sup> At the time of the marriage, plaintiff had graduated from high school and had one and one-half years of college education. Defendant had graduated from Michigan Tech University with a degree in business administration and was working for a family business. Shortly after marrying, defendant started his own business, Coppertec, Inc. Plaintiff worked as a bank teller for the first three years of marriage until the birth of their first child. The parties mutually decided plaintiff should quit working in order to stay home with their children.

At the time of the trial, the parties' marital assets totaled over \$4,000,000. The parties entered into a property settlement that awarded each an equal share of the marital assets. Included in plaintiff's share was a cash payment of \$1,421,633 from defendant due within sixty days after entry of the judgment. Gerald Gabriel, a certified public accountant, testified on behalf of plaintiff as an expert. Based on his testimony, the trial court found that investing the cash award would give plaintiff a stream of income in the amount of approximately \$91,501.50

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<sup>1</sup> At the time of trial, Jesse (d/o/b 11/29/83) and Jeremiah (d/o/b 10/13/85) had reached the age of majority, but Joshua (d/o/b 10/12/86) had not and was still attending high school.

annually. The court determined that this amount was sufficient to cover plaintiff's post-divorce expenses and maintain a comfortable standard of living. The court further found that plaintiff had work experience as a bank teller and secretary and could supplement her income by reentering the work force. Alternatively, the court found plaintiff could complete her education. The court determined defendant's annual earning ability at \$190,000 and found that in order to make the cash payment, defendant would have to borrow 100% of the amount. Based on current industry rates, the court determined the loan would cost defendant \$143,964 a year.<sup>2</sup> The court concluded that after deducting this amount from defendant's projected income of \$190,000, defendant was left with \$46,036 for his living expenses.

## II. Analysis

### A. Standard of Review

The award of alimony is in the trial court's discretion, and the trial court's decision is reviewed for an abuse of discretion. *Gates v Gates*, 256 Mich App 420, 432, 664 NW2d 231 (2003). On appeal, the trial court's factual findings are reviewed for clear error. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). The findings are presumptively correct and the burden is on the appellant to show clear error. *Gates, supra* at 432. A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been made. *Beason, supra* at 804-805. If the trial court's findings are not clearly erroneous, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts. *Spark v Spark*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). The trial court's decision must be affirmed unless the appellate court is firmly convinced that it was inequitable. *Gates, supra* at 433.

### B. Spousal Support

The purpose of spousal support "is to balance the incomes and needs of the parties in a way that will not impoverish either party," *Korth v Korth*, 256 Mich App 286, 289; 662 NW2d 111 (2003), and it is to be based on what is just and reasonable under the circumstances of the case. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Plaintiff first argues that the trial court erred in denying spousal support by not considering income defendant received from rental property. This income, plaintiff contends, when added to defendant's annual earning ability increases defendant's ability to pay spousal support. Additionally, plaintiff argues that certain tangible property defendant received in the division of the marital assets should have been included as income because defendant could have sold them and invested the proceeds. After careful review of the trial court's opinion, we find the trial court did not abuse its discretion in denying spousal support, nor did it clearly err in its factual findings. In determining defendant's annual earning ability, the trial court considered testimony from plaintiff's expert witness. The testimony concerned the average earnings of similar employers in a comparable industry, the rental income from real property, and defendant's past earnings, including the year

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<sup>2</sup> The trial court obtained this figure from [www.bankrate.com](http://www.bankrate.com) and took judicial notice of the figure pursuant to MRE 201(b)(2).

to year fluctuation in income as a result of the business' dependency on the health of the steel industry. The trial court's factual findings were supported by the evidence, and its determination of defendant's annual earning ability was reasonable in light of all the facts presented.

Plaintiff also argues that the trial court erred in denying spousal support when it failed to consider the long-term effect of inflation on the investment funds. Plaintiff contends that considering inflation is necessary to keep up with the current present value of the funds in today's dollars so as not to dissipate the true power of plaintiff's investment and reduce her stream of income.<sup>3</sup> This Court has previously held that "investments which fluctuate with market forces need not be adjusted for inflation as must be payments of a sum certain in the future." *Burkey v Burkey*, 189 Mich App 72, 77; 471 NW2d 631 (1991). In the present case, plaintiff is not receiving a sum certain in the future. The property settlement award required defendant to make a lump sum cash payment. This Court in *Burkey* reasoned that inflation need not be considered because the value of the investment may perform better or worse than the rate of inflation depending on plaintiff's investment choices. Therefore, the trial court did not abuse its discretion when it properly ignored the effect of inflation.

Moreover, plaintiff argues that the trial court erred in considering court-ordered child support as part of her income stream. In its opinion the trial court stated: "In addition to this projected income stream, Plaintiff will receive child support." Plaintiff contends that the trial court's alleged consideration of child support payments as part of her income stream effectively reduced her need for spousal support. It is well settled that child support payments are intended for the benefit of the child. *Gallagher v Dep't of Social Services*, 24 Mich App 558, 565; 180 NW2d 477 (1970). We do not think the trial court considered child support as part of plaintiff's stream of income. At most, the trial court might have considered it when determining her needs. Further, in light of all the facts in this case, any error in considering child support as part of plaintiff's income was harmless. The property award plaintiff received is sufficient to meet her needs, and the court did not abuse its discretion in denying spousal support.

Lastly, plaintiff argues that it was inequitable for the trial court not to award spousal support. The trial court properly considered and weighed the alimony factors. The evidence presented at trial, as reasonably considered by the trial court, established that the parties were married for over twenty-three years, are in good health, and that neither party was significantly more at fault for the breakdown of the marital relationship. The court determined that plaintiff could obtain employment and that the property she received was sufficient to meet her post-divorce living expenses and provide for a comfortable lifestyle.

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<sup>3</sup> This Court has previously held that in determining whether a judgment of divorce should be modified, inflation is but one factor among many the courts consider. *Rapaport v Rapaport*, 158 Mich App 741, 749; 405 NW2d 165 (1987). However, the issue in this case differs from *Rapaport*. Unlike in *Rapaport*, here, the effect of inflation is pertinent to plaintiff's own stream of income as derived from the investment of a one time cash payment. Here, we are not dealing with an ongoing obligation to support.

We conclude that the denial of spousal support in light of the division of property met the objective of balancing the incomes and needs of the parties so as to avoid impoverishing either party. *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly